

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 NEWMARK GROUP, INC., G&E
5 ACQUISITION COMPANY, LLC and BGC
REAL ESTATE OF NEVADA, LLC

Case No. 2:15-cv-00531-RFB-EJY

6 Plaintiff,

ORDER

7 v.

8 AVISON YOUNG (CANADA) INC.;
9 AVISON YOUNG (USA) INC.; AVISON
YOUNG-NEVADA, LLC, MARK ROSE,
10 THE NEVADA COMMERCIAL GROUP,
JOHN PINJUV, and JOSEPH KUPIEC; DOES
11 1 through 5; and ROE BUSINESS ENTITIES
6 through 10,

12 Defendants.

13
14 Before the Court is Plaintiffs' Motion for Leave to File Reply In Support of Motion to
15 Compel Directed to the NCG Defendants, and Certain Exhibits, Under Seal (ECF No. 273). No
16 response to this Motion was filed.

17 As explained in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006),
18 courts generally recognize a "right to inspect and copy public records and documents, including
19 judicial records and documents." *Id.* at 1178 citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589,
20 597 & n. 7 (1978). This right is justified by the interest of citizens who "keep a watchful eye on the
21 workings of public agencies." *Id.* As Plaintiffs know, a party seeking to file a confidential
22 document under seal must file a motion to seal and must comply with the Ninth Circuit's directives
23 in *Kamakana*. Parties seeking to maintain the secrecy of documents attached to dispositive motions
24 must show compelling reasons sufficient to overcome the presumption of public access. *Id.* If a
25 sealing order is permitted, it must be narrowly tailored. *Press-Enterprise Co. v. Superior Ct. of Cal.,*
26 *Riverside Cty.*, 464 U.S. 501, 512 (1984). When a document is attached to a non-dispositive motion,
27 which is the case here, the "public policies that support the right of access to dispositive motions ...
28 do not apply with equal force to non-dispositive materials." *Kamakana*, 447 F.3d at 1179 (citation

1 omitted). “Thus a particularized showing, under the good cause standard of Rule 26(c), will suffice
2 to warrant preserving the secrecy of sealed discovery material attached to non-dispositive
3 motions.” *Id.* at 1180 (citations, quotation marks and brackets omitted).

4 Here, Plaintiff has demonstrated good cause for filing Exhibits 3, 5, 6, and 7 under seal as
5 these documents contain confidential and/or proprietary information the public disclosure of which
6 could result in misuse that would harm the parties. However, the Court believes Exhibits 1 and 2
7 can be redacted to exclude email addresses, personal telephone numbers, website addresses and web
8 references from the bodies of these email chains thereby leaving the remainder of the information
9 available for review.

10 Consistent with the above, the Court also finds that the portion of Plaintiffs’ Reply brief (ECF
11 No. 271) on page 1, line 25, should be redacted to remove the individual name(s), if that is the
12 concern. However, the remainder of the current redactions, starting at page 1, line 25 and ending at
13 page 2, line 1, appear to be neither confidential nor proprietary. The information also does not
14 implicate any trade secret or business operation that is unique to this case. Thus, a less heavily
15 redacted reply brief may be filed without risking harm to the parties. The Court finds that this same
16 analysis applies to the redactions on page 2, lines 7 through 9; page 5, n.2, lines 27-28; and, page 6,
17 lines 9-12 and 23-24, all of which should be unredacted as the information currently redacted does
18 not implicate a trade secret, confidential or proprietary information, or business operation that is
19 unique to this case. There is no harm that will come to the parties if this information is available to
20 the public. In contrast, the redactions on page 8 refers to a proprietary agreement and, therefore, are
21 approved as filed under seal.

22 Accordingly,

23 IT IS HEREBY ORDERED that Plaintiffs’ Motion for Leave to File Reply In Support of
24 Motion to Compel Directed to the NCG Defendants, and Certain Exhibits, Under Seal (ECF No.
25 273) is GRANTED in part and DENIED in part.

26 IT IS FURTHER ORDERED that Exhibits 3, 5, 6, and 7 to ECF No. 271 shall remain sealed.

27 IT IS FURTHER ORDERED that Exhibits 1 and 2 to ECF No. 271 shall remain temporarily
28 sealed.

1 IT IS FURTHER ORDERED that if either party wishes to present additional information to
2 the Court justifying sealing Exhibits 1 and 2 to ECF No. 271 in their entirety, they may do so within
3 ten (10) days of the date of this Order. If no additional information is provided by either party by
4 the close of business on the tenth (10th) day following the date of this Order, Plaintiffs shall refile
5 Exhibits 1 and 2 in the reduced, redacted form described above within fifteen days of the date of this
6 Order. The unredacted version of Exhibits 1 and 2 shall remain sealed.

7 IT IS FURTHER ORDERED that Plaintiffs' Motion for Leave to File Reply In Support of
8 Motion to Compel Directed to the NCG Defendants (ECF No. 271) shall remain temporarily sealed.

9 IT IS FURTHER ORDERED that the redactions on page 8 of ECF No. 271 are proper and
10 shall remain filed under seal.

11 IT IS FURTHER ORDERED that if either party wishes to present additional information to
12 the Court justifying the redactions on pages 1, 2, 5, and 6 of ECF No. 271, they may do so within
13 ten (10) days of the date of this Order. If no additional information is provided by either party by
14 the close of business on the tenth (10th) day following the date of this Order, Plaintiffs shall resubmit
15 their Reply brief (ECF No. 271) removing all redactions on pages 2, 5, and 6, and removing all
16 redactions, other than the individual name, from page 1 leaving all remaining portions of page 1
17 unredacted.

18 DATED: March 25, 2020

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21 ELAYNA J. YOUCHAH
22 UNITED STATES MAGISTRATE JUDGE
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